

art in context

Center for Communications

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August 29, 2001

Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554

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AUG 30 2001

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In the matter of: Request for Review of the Decision of the Universal Service Administrator by Art in Context Center for Communications.

RE: FCC Docket Nos. 97-21 and 96-45

Dear Sir/Madam:

This letter requests the review by the Federal Communications Commission of the Administrator's Decision on Waiver Request, August 21, 2001, issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) in response to the Letter of Appeal, August 13, 2001, filed by Art in Context Center for Communications.

Art in Context Center for Communications requests the FCC's review of the Administrator's August 21, 2001, decision and the reversal of the SLD's August 6, 2001, decision denying discounts for telecommunications services for Art in Context Center for Communications in 2001-2002. The extenuating circumstances that resulted in the filing of Form 471 for Year 4 after the January 18 window closed are set forth below.

In filing for Year 4 discount funding, as it had done in its previous Year 3 filings, the library believed that it was following the required steps in a proper and timely manner. Art in Context's E-rate application filings are processed by Teresa Schmittroth, the library's Program Director. In May 2000, Ms. Schmittroth was diagnosed with cancer and, under medical advice, began aggressive treatment beginning with surgery on June 20, 2000, followed by five months of chemotherapy, August 4 - December 28, 2000, then followed by six weeks of daily radiation treatments through March 2001. While she was able to work during that period, Ms. Schmittroth's capacity for accomplishing responsibilities was diminished due to side effects associated with this treatment. In late August 2000, Ms. Schmittroth read the following information on the SLD web site with reference to Form 470, and scheduled the library's filings to conform with the posted guidelines:

"For tariffed telecommunications services or month-to-month contracts, the Form 470 can be filed any time after July 1 of the year preceding the funding year for which you are applying (for example, July 1, 2000 for the funding year beginning July 1, 2001), as long as it is at least 28 days before you file your Form 471.

"For contract services for which you are seeking a new contract for the coming funding year, you may file Form 470 whenever you wish to begin your procurement process, as long as it is at least 28 days before you file Form 471."

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No specific deadline accompanied the posted information in August 2000. Ms. Schmittroth understood the guidelines to mean that as long as the library properly sought bids for services through the filing of Form 470 for the required twenty-eight day period, it could proceed with filing Form 471 "any time after July 1," and "whenever you wish to begin your procurement process." Given the posted information, she scheduled the library's filing of Form 470 for January, just after her chemotherapy treatment ended, believing that she was complying fully with the rules described by the SLD.

The following is a synopsis of the library's application history for Year 4 discount funding:

On January 25, 2001, Art in Context Center for Communications posted Form 470 for Year 4, (Form 470 Application Number: 725370000345752 filed online; Block 5 signed and mailed January 25, 2001), and subsequently received *Form 470 Receipt Notification Letter* from the SLD dated January 29, 2001. The library proceeded to file Form 471, (Form 471 Application Number: 262426 filed online; Block 6 signed and mailed February 22, 2001), but did not receive a *Form 471 Receipt Acknowledgment Letter*. The library subsequently called the SLD on March 8, 2001, to inquire on the status of its Form 471 and to inquire when the library would receive its *Form 471 Receipt Acknowledgment Letter*. The library was informed by the SLD that "those letters had not gone out yet" and that it was necessary to wait for written acknowledgment. On July 24, 2001, the library again contacted the SLD. On July 25, 2001, the library contacted the SLD and was informed for the first time there was no record of the SLD having received Block 6 of Form 471, which was sent to SLD on February 22, 2001. As advised by SLD, the library immediately resubmitted a signed original of Form 471-Block 6 on July 25, 2001. The SLD's decision of August 6, 2001, denying discounts for telecommunications services as stated in the Form 471 acknowledgment card titled "Your Form 471 has been received - but postmarked after the January 18 window closed" was received by the library on Friday, August 10, 2001. The next business day, Monday, August 13, 2001, the library sent its letter of appeal, via overnight Federal Express. On Friday, August 24, 2001, the library received the *Administrator's Decision on Waiver Request* and is herewith submitting this appeal letter to the FCC.

Without Year 4 discounts, the library's services will be severely limited and during peak hours, when classrooms are in session, many will not be able to receive any service. Should the library not receive a reversal of the Year 4 discount funding commitment decision for its Priority 1 requests – Internet Access, (FRN# 674111, 674113), the library will have to limit Internet access for services to 12.5% of the library's state-approved *Technology Plan 2001-2004*¹ for Internet access due to insufficient funding. For the Art in Context online reference library, limiting Internet access to this extent will adversely affect over 6 million annual users.

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Request for Review of the Decision of the Universal Service Administrator by Art in Context Center for Communications

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The library is requesting an expeditious decision in an effort to maintain and preserve its present ability to provide information for over 6 million annual users including classrooms, students and the general public, which it serves. In light of the extenuating circumstances brought forth herein, the library requests this reconsideration and ultimately the reversal of the SLD's August 6, 2001, decision. Please contact me should you require any additional information. Thank you for your time and consideration.

Sincerely,



Charles SanClementi, Jr.
Executive Director

Art in Context Center for Communications

tel: 212-533-8387 fax: 212-533-8478

email: chuck@artincontext.org

<http://www.artincontext.org>

Attachments: *Administrator's Decision on Waiver Request, SLD*

¹ The library's Technology Plan 2001-2004 for Internet Access, updated annually, is reviewed by the New York Metropolitan Reference and Research Library Agency, and approved by the State Education Department, New York State Library, Division of Development.



UNIVERSAL SERVICE
ADMINISTRATIVE CO.

Box 125 – Correspondence Unit
100 South Jefferson Road
Whippany, New Jersey 07981

SCHOOLS AND LIBRARIES DIVISION

Administrator's Decision on Waiver Request

August 21, 2001

Teresa Schmittroth
Art in Context
P. O. Box 336
New York, NY 10276

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FCC MAIL ROOM

Re: Your Request for Waiver of Application Window For Program Year 4 2001-2002

Application Number: 262426

Date Request Received: August 14, 2001

The Schools and Libraries Division received your request, cited above, for a waiver of the application window deadline for the Schools and Libraries Universal Service Support Mechanism (E-Rate).

The Federal Communications Commission (FCC) rules do not permit the Schools and Libraries Division (SLD) to consider your request. Therefore, your request for a waiver of the application window deadline may not be considered by SLD. If you wish to appeal this decision, you may submit an appeal to the FCC at the following address:

**Federal Communications Commission
Office of the Secretary
445 12th Street, S.W.
Room TW-A325
Washington, DC 20554**

You must file an appeal with the FCC no later than 30 days from the date of this letter, in order for your appeal to be considered by the FCC.

Schools and Libraries Division
Universal Service Administrative Company